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App. Serial No.: 10/815,376

Atty. Docket No.: 0061-011

REMARKS

These remarks are in response to the Office Action dated January 11, 2007, which has a shortened statutory period for response set to expire April 11, 2007. A one-month extension, to expire May 11, 2007, is requested in a petition filed herewith.

Drawings

The drawings are objected to under 37 CFR § 1.84(p)(5) for including reference characters not mentioned in the specification. The specification is amended to include the inadvertently omitted reference characters. No new matter is added. Applicants respectfully request withdrawal of the objections to the drawings.

Specification

The specification is objected to as failing to provide proper antecedent basis for the language of Claim 31. Claim 31 is amended to include language consistent with Claim 1. Applicants respectfully request withdrawal of the objection to the specification.

Claims

Claims 1-42 are pending in the above-identified application. Claims 1-42 are rejected over prior art. Claim 31 is amended. Claims 1-30 and 32-42 remain as filed. Reconsideration is requested.

Rejections Under 35 U.S.C. § 102

Claims 1-2, 7-31, 33-36, and 42 are rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 5,215,508 (Bastow).

Applicants respectfully traverse.

The standard for anticipation is set forth in M.P.E.P. § 2131 as follows:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

App. Serial No.: 10/815,376
Atty. Docket No.: 0061-011

Claims 1-36:

Claim 1 is amended herein to correct a clerical error. In particular, the word "dispose" has been changed to "disposed."

Claim 1 recites (in part):

a biasing member disposed between said lower leg engaging apparatus and said foot engaging apparatus to bias said lower leg engaging apparatus and said foot engaging apparatus away from each other. (emphasis added)

Bastow does not disclose this element of Claim 1. Rather, the device of Bastow is an exercise device that provides resistance to movement of the foot. See, for example, the description of the fluid cylinders at Col. 7, Lines 46-68. There is no indication in Bastow that any force is exerted when the foot is not in motion. The fluid cylinders of Bastow do not "bias said lower leg engaging apparatus and said foot engaging apparatus away from each other," as recited in Claim 1.

Because the cited reference does not disclose each and every element of Claim 1, the reference does not anticipate Claim 1. Claims 2-36 depend, either directly or indirectly, from Claim 1 and are, therefore, distinguished from the cited prior art for at least the same reasons as Claim 1. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of Claims 1-36.

Claims 37-41:

Claim 37 recites (in part): "actuating said biasing member to urge said foot engaging apparatus and said leg engaging apparatus apart from one another." As indicated above with respect to Claim 1, the fluid cylinders of Bastow do not exert such a force. Therefore, Bastow does not disclose each and every element of Claim 37 and does not anticipate Claim 37. Claims 38-41 depend, either directly or indirectly, from Claim 37 and are, therefore, distinguished from Bastow for at least the same reason. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of Claims 37-41.

App. Serial No.: 10/815,376
Atty. Docket No.: 0061-011

Claim 42:

Claim 42 recites (in part): "means for pushing said lower leg engaging means and said foot engaging means in opposite directions." As indicated above, Bastow does not disclose such means. Therefore, Bastow does not anticipate Claim 42. Applicants respectfully request reconsideration and withdrawal of the rejection of Claim 42.

For the above reasons Applicants request reconsideration and withdrawal of all of the rejections under 35 U.S.C. § 102.

Rejections Under 35 U.S.C. § 103

Claims 3-6, 32, and 37-41 are rejected under 35 U.S.C. § 103 as being unpatentable over Bastow in view of Applicant's specification.

In order to establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. M.P.E.P. §2143.

As indicated above with respect to the rejections under 35 U.S.C. §102, Bastow does not disclose the limitations of the independent claims directed to biasing the foot engaging apparatus and the leg engaging apparatus away from each other. Each of Claims 3-6, 32, and 37-41 depends, directly or indirectly, from one of the independent claims discussed above and, therefore, includes all of the limitations of the respective independent claim. Thus, the prior art does not teach or suggest all of the claim limitations of Claims 3-6, 32, and 37-41, and no prima facie case of obviousness is established with respect to these claims.

For the above reasons Applicants request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

Objection to Claim 9:

Applicants note the Examiner's objection to Claim 9. However, the correction suggested by the Examiner appears to be relevant to Claim 10. Therefore, Applicants have amended Claim 10 as the Examiner suggested.

App. Serial No.: 10/815,376
Atty. Docket No.: 0061-011

For the foregoing reasons, Applicants believe Claims 1-42 are in condition for allowance. Should the Examiner undertake any action other than allowance of Claims 1-42, or if the Examiner has any questions or suggestions for expediting the prosecution of this application, the Examiner is requested to contact Applicants' attorney at (269) 279-8820.

Respectfully submitted,

Date: 5/11/07

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CERTIFICATE OF FACSIMILE TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being transmitted via facsimile, on the date shown below, to: MS Amendment Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, at (571) 273-8300.

Date: 5/11/07

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